

would the new rules be implemented? What happens to the health care bill? Who decides the answers to these questions?

Moreover, if we overrule the Chair, we would be setting a dangerous precedent that points of order lie even if not provided for in Senate rules, standing orders, or procedures.

It is clear the purpose of this is to obstruct and delay. I urge my colleagues to vote to table the Cornyn appeal of the ruling of the Chair when that comes.

Mr. CORNYN. Will the Senator yield for a question?

Mr. REID. No, I will not. The health care votes we have held this week have been procedural in nature. Each has been a party-line vote and much of this debate is focused on politics. But health reform is not about procedure or partisanship or politics. It is about people—people like the thousands who write us every day.

At my desk, we have a few of the letters we have picked up in the last day or so. Sorry, staff has had to lift that and I didn't. This is a few we have gotten. Look at this. They are all basically the same. Each of these letters right here represents a story, a tragedy, a life, a death, but most of all, a person—a person, people who wake up every morning and struggle to get health care or struggle to hold on to what they have, people who lie awake every night second-guessing the agonizing decisions they have to make about what to sacrifice just to stay healthy.

Here is a letter that was written to Senator BOB CASEY of Pennsylvania. Listen to what this woman said:

Dear Senator CASEY. In a country like the United States, we shouldn't need a tip jar in an ice cream shop to raise money for a kid with leukemia. Jennifer Wood.

Here is another one of those letters. This one is from a father in North Las Vegas, NV:

Can you imagine what it is like to have a doctor look you in your eye when you hold your 1-year-old child and be told that you will likely outlive your son?

He goes on to say:

I am certain my story is not unique, but it is real. Stop forcing Americans to use the most expensive point of service, the emergency room, to get what the system won't give them. Let's make all Americans equal in the eyes of health care, please.

This legislation is not about the number of pages of this bill. It is about the number of people—people such as the man whose letter I just read who was told by a doctor that he would likely outlive his son. It is about the number of people whom this bill will help. That is what this is all about. It is about fairness. So when people are hurt or sick, they can go see somebody who can help them and not lie awake at night wondering if they will outlive their 1-year-old son.

Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. There is 1½ minutes remaining.

Mr. REID. I yield back that time and ask the vote start earlier.

I withdraw that request.

I ask unanimous consent that prior to each vote today there be 2 minutes of debate equally divided and controlled in the usual form.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

There is now 2 minutes equally divided.

The majority leader.

Mr. REID. Mr. President, stop the 2 minutes from running. I do want to explain. We will shortly have a series of up to seven votes. As we noted in the last few days, if Members remain at their desks, the votes can be concluded much earlier.

ENSIGN POINT OF ORDER

The ACTING PRESIDENT pro tempore. There is now 2 minutes of debate equally divided prior to a vote on the constitutional point of order offered by the Senator from Nevada, Mr. ENSIGN.

Who yields time?

The majority leader.

Mr. REID. Mr. President, the vote sequence will be as follows: Ensign constitutional point of order; Corker unfunded mandates point of order; Baucus motion to table the Cornyn appeal ruling of the Chair; Hutchison constitutional point of order. I have been advised that a Republican Member will move to suspend the rules so he can offer his amendment under rule XXII. He is going to be allowed 10 minutes. This will require 67 votes because it is an effort to change the rules. Following that we will have adoption of the substitute amendment and cloture on H.R. 3590. So there is a series of seven votes.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Nevada is recognized.

Mr. ENSIGN. Mr. President, I raise a constitutional point of order because I am concerned that the health reform bill violate's Congress's enumerated powers under article I, section 8 and the fifth amendment takings clause of the Constitution.

Each one of us takes an oath to defend the Constitution of the United States. We do not take an oath to reform health care. We do not take an oath to do anything else here but to defend the Constitution of these United States.

Health care reform needs to fit within the Constitution. The Constitution limits the powers we have. The Congress, the U.S. Government has never enacted anything that would regulate someone's inactivity in the way the individual mandate in this health care bill would. Anything we have ever done, somebody actually had to have an action before we could tax or regulate it. In this case, if you choose to not do something—in other words, if you do not choose health insurance—this bill will actually tax you. It will act as an onerous tax. So for the first

time in the history of the United States this bill will do something the Federal Government has never done before. This bill would do something that is beyond Congress's powers to authorize. This bill is unconstitutional and I urge all Members to vote in support of the constitutional point of order.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from Montana.

Mr. BAUCUS. Mr. President, our committee and the HELP Committee have given a lot of thought to the provisions in this legislation. We also gave a lot of thought to the constitutionality of the provisions—how they work and the interrelationship between the power of Congress and the States and what States will be doing, particularly under the commerce clause and the tax-and-spending powers of the Constitution.

It is very strongly our considered judgment, and that of many constitutional scholars who have looked at these provisions—and many articles have been put in the Record—that clearly these provisions are constitutional. The commerce clause is constitutional, the tax-and-spending clause, and the provisions clearly are constitutional.

I yield back my time.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the constitutional point of order made by the Senator from Nevada, Mr. ENSIGN, that the amendment violates article I, section 8 of the Constitution, and the fifth amendment.

The question is, Is the point of order well taken?

The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Kentucky (Mr. BUNNING).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted "yea."

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 39, nays 60, as follows:

[Rollcall Vote No. 389 Leg.]

YEAS—39

Alexander	DeMint	Lugar
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Snowe
Collins	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Voinovich
Crapo	LeMieux	Wicker

NAYS—60

Akaka	Burr	Dorgan
Baucus	Byrd	Durbin
Bayh	Cantwell	Feingold
Begich	Cardin	Feinstein
Bennet	Carper	Franken
Bingaman	Casey	Gillibrand
Boxer	Conrad	Hagan
Brown	Dodd	Harkin